

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

OFFICE OF THE CHAIRMAN

November 15, 2002

Mr. Scott B. Gudes
Deputy Under Secretary for Oceans and Atmosphere
United States Department of Commerce
Washington, D.C. 20230

Re: Request for Comments on an Administrative Appeal brought by Millennium
Pipeline Company pursuant to the Coastal Zone Management Act

Dear Mr. Gudes

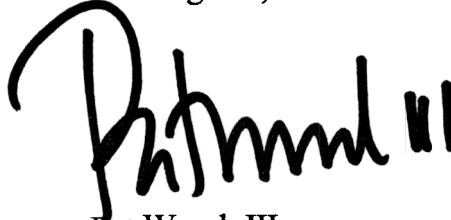
On September 26, 2002, you requested the comments of the Federal Energy Regulatory Commission (Commission) on an administrative appeal brought by Millennium Pipeline Company (Millennium) pursuant to the Coastal Zone Management Act (CZMA). Millennium requests that the Secretary of Commerce override the New York State Department of State's objection to a consistency certification for Millennium's proposed natural gas pipeline (the Millennium Project) which the Commission has approved to deliver natural gas from Canada to the New York City area and points in between. In view of the serious need for new infrastructure to deliver energy in the Northeast and our Commission's exhaustive review of alternative routes for this project and their respective impacts, I am writing this letter to urge you to find that the Millennium Project may be approved as consistent with the CZMA.

The Commission issued orders approving construction and operation of the Millennium Project on December 19, 2001 and September 19, 2002. Prior to approving the Millennium Project, the Commission conducted an extensive analysis of the project as required by the Natural Gas Act and other statutes. This analysis examined, among other things, the need for the project. Based on its review, the Commission concluded that the project is required to meet the growing demand for natural gas in the region. The Commission's analysis also included an exhaustive study of the project's environmental impacts as required by the National Environmental Policy Act and other environmental statutes; this analysis focused in particular on the appropriate location for crossing the Hudson River and the impacts of the project on surrounding coastal areas, the matters which are the subject of the instant appeal to the Secretary. This analysis, which was subject to review and comment by local, state and federal agencies, the public and other entities, concluded that the project would have acceptable environmental impacts, including crossing the Hudson River at Haverstraw Bay.

Having conducted a wide-ranging analysis of the need for this project and its environmental impacts, the Commission concluded that the project is required in the public interest. I am now concerned that attempts to develop the nation's energy infrastructure not be thwarted by a local review that focuses solely on a single aspect of the project, albeit an important aspect. This is particularly true where the environmental impacts associated with the river crossing have been fully and carefully reviewed by the Commission in a public process and have been found to be acceptable. While we are mindful that the development and construction of pipeline facilities in congested and heavily populated areas present significant environmental challenges, we balanced these considerations with our overriding responsibility to ensure the timely development of an adequate energy infrastructure, particularly in large employment and population centers such as New York City. I believe that the project will contribute to the region's energy security, a particularly vital national consideration at the present time. In addition to increasing the diversity of available pipeline transportation options and access to supply sources, the pipeline will increase overall regional infrastructure reliability and offer an additional source of outage protection.

I appreciate the opportunity to comment. Enclosed are copies of the Commission's December 19, 2001 and September 19, 2002 certificate orders, and the comments of the Commission staff on Millennium's appeal. Please let me know if I can be of any further service.

Best regards,

A handwritten signature in black ink, appearing to read "Pat Wood, III". The signature is stylized with a large, sweeping initial "P" and a series of loops and strokes that form the rest of the name.

Pat Wood, III
Chairman

Enclosures

✓cc: Mr. Branden Blum, Senior Counselor
Office of the Assistant General Counsel for Ocean Services
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
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Silver Spring, MD 20910

COMMENTS
OF THE FEDERAL ENERGY REGULATORY COMMISSION STAFF
ON MILLENNIUM'S CZMA APPEAL TO THE SECRETARY OF COMMERCE

In a letter dated September 26, 2002, the Department of Commerce requested the comments of the Federal Energy Regulatory Commission (Commission) on an administrative appeal to the Secretary of Commerce brought by Millennium Pipeline Company (Millennium) pursuant to the Coastal Zone Management Act (CZMA). Millennium requests that the Secretary override the New York State Department of State's (NYSDOS) objection to a consistency certification for Millennium's proposed natural gas pipeline (the Millennium Project). The comments of the Commission staff are set forth below.

On December 22, 1997, Millennium filed an application with the Commission pursuant to section 7(c) of the Natural Gas Act (NGA) for certificates of public convenience and necessity authorizing it to, among other things, construct and operate an interstate natural gas pipeline from the border between the United States and Canada to a terminus in Mount Vernon, New York. Thereafter, the Commission conducted a comprehensive review of the project, including a review of the need for the project as required by the NGA, and an environmental review of the project as required by the National Environmental Policy Act (NEPA) and other statutes.

In providing these comments, the Commission staff is cognizant of the statutory schemes Congress implemented in adopting the Natural Gas Act and the Coastal Zone Management Act. The CZMA is designed to encourage and assist the individual states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone. Pursuant to that charter, a state is charged with making such decisions, subject to review by the Secretary to ensure that the state's determination is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security.

In the Natural Gas Act, Congress delegated licensing authority for interstate natural gas pipelines solely to the Commission. It did so to ensure that the national interest in developing a national energy infrastructure would be paramount over local concerns that might otherwise thwart the construction and operation of such projects.

In this particular case, the Commission has been fully aware of, and has independently evaluated, the environmental concerns raised by the crossing of Haverstraw Bay and other areas of New York's coastal zone. The Commission's

certificate orders in this proceeding acknowledged that there will be transient environmental impacts associated with the crossing and the Commission has taken all reasonable steps to reduce those impacts. It also evaluated other potential crossings of the Hudson River and concluded that they too pose significant environmental concerns. This review led the Commission to conclude that the proposed crossing of Haverstraw Bay is the preferred route for the Millennium Project.

Although we understand the concerns raised by the NYSDOS, we nonetheless believe that the Millennium Project is consistent with the objectives and purposes of the CZMA and recommend that the Secretary find that the Commission may approve the project for construction and operation. In doing so, we urge the Secretary to consider the statutory scheme that gives the Commission sole responsibility to determine whether and under what conditions a proposed interstate pipeline is required by the public convenience and necessity and to give due weight to the findings that the Commission has made in determining that this particular project is in the public interest.

As a result of its review of the record in this case, the Commission issued orders on December 19, 2001 and September 19, 2002 approving the construction and operation of the Millennium Project (copies of the Commission's December 19, 2001 and September 19, 2002 orders and the final environmental impact statement are attached for your information). The Commission's approval is subject to, among other things, Millennium obtaining a consistency determination as required by the CZMA. As to the issue of need for Millennium, the Commission concluded that the benefits of Millennium's proposed project are clear and significant. The Commission noted that Millennium has entered into firm, long-term, binding precedent agreements with customers for two-thirds of the pipeline's 700,000 Dekatherms per day of capacity. It also noted that studies conducted by government, industry, and private organizations, including the Energy Information Administration, Gas Research Institute, Interstate Natural Gas Association of America, and the Cambridge Energy Research Associates, forecast increasing demand for natural gas in the Northeastern United States (particularly for electric generation) and the need for increased pipeline capacity to meet that demand.

In reaching the conclusion that the Millennium Project is needed, the Commission found that the project will diversify the range of gas supplies available to the Northeast. It found that the addition of a new pipeline in the region, with access to multiple supply areas, will expand shippers' options, promoting the growth of competitive markets for natural gas and potentially contributing to lower and more stable natural gas prices over the long term. It further found that the project will also increase the overall reliability of the region's infrastructure and offer an additional source of protection from electric outages. The Commission projected that the pipeline capacity created by the Millennium Project should foster development of more North American energy supplies, and that the

project will allow for a greater measure of energy independence, especially to the extent new gas supplies delivered to the region by the Millennium Project displace overseas energy supplies. Accordingly, the Commission concluded that Millennium's proposals are in the public convenience and necessity and issued the certificates necessary to construct and operate the project.

The Commission, prior to issuing certificates for the Millennium Project, also carefully considered the environmental impacts of the proposed project. The Commission, among other things, prepared a draft environmental impact statement, supplemental environmental impact statement, and a final environmental impact statement, all of which were subject to comment by state, local and federal agencies, the public, and other entities. The Commission also consulted with numerous state, local and federal agencies with regard to the potential environmental impacts of the project, including the issues of concern to the NYSDOS in its objection to the consistency certification for the proposed project.

As a result of its review, the Commission concluded that construction and operation of Millennium's pipeline would result in impacts along the route that would be locally significant, most notably during the construction period. It noted that, although these impacts may be mitigated extensively through mitigation measures required by the Commission, many would be unavoidable. The Commission also concluded that, although it examined many alternatives, including alternatives to locating the pipeline in the coastal areas of concern to the NYSDOS, it was unable to find an alternative that would not create similar disturbances to other locations, other landowners, and other environmentally sensitive areas in New York or neighboring states.

On balancing the many interests the Commission is required by statute to consider, including specifically the impacts to New York's coastal zone at issue here, the Commission concluded that the Millennium Project is in the public convenience and necessity and authorized the construction and operation of the project subject to its compliance with various conditions designed to, among other things, protect the environment.

On May 9, 2002, the NYSDOS objected to the consistency certification for the Millennium Project. Its primary concerns are that Millennium will cross: (1) the Village of Croton Wellfield, the Catskill Aqueduct at the Byn Mawr Siphon, and the water supply land located in the New Croton Reservoir Watershed; and (2) the Hudson River at Haverstraw Bay. The NYSDOS stated that there are alternatives which would allow the activity to be permitted in a manner consistent with the Coastal Management Plan and the Village of Croton-on-Hudson Local Waterfront Revitalization Plan. These alternatives would require Millennium to terminate the proposed pipeline in the vicinity of Bowline

Point in Rockland County on the west side of the Hudson River, route the Hudson River crossing of the pipeline north and outside of the designated Haverstraw Bay habitat, and consider existing pipeline rights-of-way that avoid the New York City drinking water supply and delivery systems. Alternatively, NYSDOS suggested that Millennium use excess capacity in the existing Algonquin pipeline to avoid crossing the Hudson River.

Upon consideration of NYSDOS' May 9, 2002 objection, the Commission staff recommends that the Secretary find that Millennium may be federally approved because it is consistent with the objectives or purposes of the CZMA.

In support thereof, we note that the Millennium Project furthers the national interest in a significant or substantial manner. Perhaps most significantly, it will help ensure that the energy needs of the heavily populated Northeastern United States are met. The Millennium Project is capable of delivering seven million cubic feet of natural gas a day into this region. The natural gas will primarily come from Canada, a close political and economic ally of the United States, and will reduce reliance on overseas supplies. Moreover, while no fossil fuel (or any other fuel for that matter) is completely benign in terms of its environmental effects, natural gas makes far less of a contribution to global warming than, for example, other fossil fuels, such as coal or fuel oil, that are likely to be used in its place. These values are consistent with those the CZMA seeks to foster as set forth in Sections 302 and 303 of the Act.

It can be expected that the Millennium Project will deliver supplies of natural gas into the heavily populated mid-Atlantic region of the United States for a very long time, perhaps the next fifty to one hundred years. This contribution to the national interest is incalculable in terms of economic benefit achieved and environmental consequences avoided over that time-frame. The impacts of the project on New York's coastal zone, on the other hand, will be primarily transient and limited to the time during which construction would occur, typically a period of days or weeks.

Finally, there is no reasonable alternative available which would permit the Millennium Project to be constructed consistent with the enforceable policies of New York's Coastal Management Plan. In terms of the crossing itself, no one has identified, and the Commission is not aware of, any feasible technology or approach that would allow the pipeline crossing to be constructed in a significantly less intrusive way. The NYSDOS has suggested that the crossing of the Hudson River be located either upstream or downstream of the proposed Haverstraw Bay crossing site. As noted above, the Commission has previously evaluated those crossing possibilities in its environmental review of the Millennium Project and rejected both locations on a variety of grounds, including unacceptable environmental impacts. The Commission also examined the

alternative of using capacity on existing pipelines, such as Algonquin, and concluded that this alternative was not viable.

For these reasons, we recommend that the Secretary find that the Millennium Project may be federally approved as consistent with the objectives or purposes of the CZMA.